

ORDINANCE NO. 956B

An Ordinance of the City Council of the City of Lincoln Adding Chapter 9.30 of the Lincoln Municipal Code Providing for Civil Remedies to be Taken Against the Person Controlling the Property Where Alcohol and/or Illegal Drugs Are Being Consumed by Minors

WHEREAS, Section 1.01.050 of the Lincoln Municipal Code provides for amendments to the Lincoln Municipal Code by the City Council; and

WHEREAS, the hosting of gatherings where minors are allowed to consume alcohol and/or illegal drugs can jeopardize the welfare and safety of those in attendance due to assaultive and/or destructive behavior; and

WHEREAS, law enforcement often lacks appropriate measures to hold such hosts accountable or to encourage them to take steps to prevent gatherings where minors consume alcohol and/or illegal drugs; and

WHEREAS, a Social Host Ordinance enhances the ability of law enforcement to deter the consumption of alcohol, smoking of marijuana, or use of other controlled substances by minors and to hold adult hosts accountable.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby incorporated by reference.

Section 2. Enactment. Chapter 9.30 of the Lincoln Municipal Code is hereby enacted to read as follows:

9.30.010 Purpose and intent.

Instances of large parties and disturbances both at rental facilities and private homes may disturb the public peace, safety, and welfare of members of the community. These incidents can also jeopardize the welfare and safety of those in attendance due to assaultive and/or destructive behavior.

The purpose of this chapter is to protect the public health, safety, and general welfare of people and premises in the city, including the quiet enjoyment of property, by enhancing the ability of law enforcement to deter the consumption of alcohol, smoking or consumption of marijuana, or use of other controlled substances by minors and to hold adult hosts accountable.

9.30.020 Definitions.

The words and phrases used in this chapter have the meanings set forth in this section.

A. "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit or used for beverage purposes either alone or when diluted, mixed, or combined with other substances.

B. "Controlled substance" means those controlled substances set forth in Sections 11054, 11055, 11056, 11057, and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive, as said sections now exist or may hereafter be amended.

C. "Gathering" means a party, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

D. "Guardian" means: a person who, under court order, is the guardian of the juvenile, or a person who looks after and is legally responsible for someone who is a juvenile.

E. "Juvenile(s)" means any person under 18 years of age.

F. "Marijuana" means any item described in Section 11018 of the California Health and Safety Code, as it now exists or may hereafter be amended whether smoked or otherwise ingested.

G. "Minor(s)" means any person under 21 years of age.

H. "Parent" means a person who is the legal natural parent, adoptive parent or step-parent of a juvenile.

I. "Premises" means any parcel(s) of property owned, leased, occupied, or under the control of a person.

J. "Social host" means any person having ownership or control of a premises, or is responsible for organizing a gathering, who knowingly permits or allows, tacitly or otherwise, a gathering or unruly gathering, as those terms are defined in this chapter, to occur on private property.

K. "Unruly gathering" shall mean a party, event or gathering where three or more persons are present at a residence or other private property in which alcoholic beverages, marijuana, and/or controlled substances are being consumed or possessed and upon which unruly conduct occurs. Illustrative of such unruly conduct is excessive noise, excessive traffic, obstruction of public streets by crowds or vehicles, public drunkenness, or unlawful public consumption of alcohol, marijuana, or controlled substances, assaults, batteries, fights, domestic violence or other disturbances of peace, vandalism, litter, and any other conduct which constitutes a threat to public health, safety, quiet enjoyment of property or general welfare.

9.30.030 Hosting, permitting, allowing a gathering where minors consume alcoholic beverages, marijuana, or other controlled substances prohibited.

A. Except as permitted by law, it is unlawful for any person having ownership or control of any premises, or who is responsible for a gathering or unruly gathering, to host, knowingly permit, or allow, tacitly or otherwise, a gathering to take place at said premises, where at least one minor possesses or consumes an alcoholic beverage, marijuana, or other controlled substance

B. Except as provided in subsection G, whenever a person having ownership or control of a premises is on the premises and allows a minor to possess or consume any alcoholic beverage marijuana, or controlled substance thereon, it shall be prima facie evidence that such person had the requisite knowledge specified in section 9.30.030(A).

C. A social host shall be deemed to have constructive knowledge that a minor has consumed or possessed alcoholic beverages, marijuana, or controlled substances if the social host did not take reasonable steps to prevent the consumption or possession of alcoholic beverages, marijuana, and controlled substances by the minor, or if with reasonable efforts he/she could have determined that consumption or possession of alcohol, marijuana and other controlled substances were being used or possessed.

D. A social host shall not be in violation of this chapter if he or she seeks immediate assistance from any law enforcement agency to immediately remove any person who refuses to abide by the social hosts' performance of the duties imposed by this chapter, or to terminate the gathering because the social host has been unable to prevent minors from consuming or possessing alcoholic beverages, marijuana, or other controlled substances despite having taken reasonable steps to do so. A social host shall not be in violation of this chapter if he or she seeks medical assistance from an emergency medical responder to provide care for a person in immediate danger due to the accidental or intentional overdose of alcohol, marijuana, or a controlled substance.

E. When law enforcement or other emergency medical providers respond, without a call from the social host as provided in Section 9.30.030(D), to a gathering at which a minor(s) has/have consumed or is consuming alcoholic beverages, marijuana, or a controlled substance, all social hosts shall be jointly and severally liable.

F. This section shall not apply to any location or place regulated by the California Department of Alcoholic Beverage Control.

G. This section shall not apply to: a parent or legal guardian who provides marijuana to a juvenile who is legally qualified to use marijuana, as required by the California Department of Public Health's "Medical Marijuana Program," as amended from time to time.

9.30.040 Penalties.

It is unlawful and a public nuisance to intentionally violate any of the provisions of this chapter, including, but not limited to, hosting, permitting, or allowing, tacitly or otherwise, a gathering on any private property in violation of this ordinance. The civil penalty for any violation of this chapter shall be a fine of one thousand dollars per occurrence. For purposes of this section an "occurrence" means each response by law enforcement or emergency medical providers on a single incident. For example, multiple responders to one call shall constitute a single occurrence and if called back or respond again, such further response is another occurrence.

Violation of this chapter may be charged as either an infraction or a misdemeanor in the discretion of the district attorney.

9.30.050 Civil injunction

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of city, create a cause of action for injunctive relief.

9.30.060 Administrative remedies.

In addition to the civil remedies and criminal penalties set forth herein, any person that violates the provisions of this chapter may be subject to administrative remedies.

9.30.070 Cumulative remedies, procedures and penalties.

Unless otherwise expressly provided, the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

9.30.080 Juvenile social hosts.

If the social host is a juvenile, the parents or legal guardians of the juvenile shall be responsible for any penalty imposed pursuant to this chapter.

9.30.090 Effect on criminal prosecution.

Nothing in the adoption or administration of this chapter shall be construed as affecting the ability to initiate or continue concurrent or subsequent criminal prosecution for any violation of the provisions of this code or any state law arising out of the same circumstances necessitating the application of this chapter.

Section 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Lincoln City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 5. Effective Date and Publication. This ordinance shall take effect thirty (30) days after its passage. Within fifteen (15) days of its passage, this ordinance shall be published once in the *Lincoln News Messenger*, a newspaper of general circulation within the City. In lieu of publication of the full text of this ordinance within fifteen (15) days after its passage, a summary of this ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code Section 36933(c)(1).

Section 7. Effective Date. This ordinance shall become effective thirty (30) days from the date of its passage.

This Ordinance was **PASSED and ADOPTED** by the following vote of the City Council of the City of Lincoln on 14th of November, 2017.

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Peter Gilbert, Mayor

ATTEST:

Gwen Scanlon, City Clerk